

ORIGINAL**FILED**

NOV 15 2010

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

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9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 **JEFFREY TORRES,**

12 Plaintiff,

13 vs.

14 **DIVERSIFIED COLLECTION**
 15 **SERVICES, INC.,**

16 Defendant.
 17 _____
 18

) Case No. **10CV 2355** **DMS WMc**

) **COMPLAINT FOR VIOLATION**
) **OF FEDERAL FAIR DEBT**
) **COLLECTION PRACTICES ACT**
) **AND ROSENTHAL FAIR DEBT**
) **COLLECTION PRACTICES ACT**

19 **I. INTRODUCTION**

20 1. This is an action for damages brought by an individual consumer for
 21 Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C.
 22 §1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection
 23 Practices Act, Cal Civ Code §1788, *et seq.* (hereinafter "RFDCPA"), both of
 24 which prohibit debt collectors from engaging in abusive, deceptive, and unfair
 25 practices.
 26
 27
 28

CR

II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. §1692k (d).

III. PARTIES

3. Plaintiff, Jeffrey Torres ("Plaintiff"), is a natural person residing in San Diego county in the state of California, and is a "consumer" as defined by the FDCPA, 15 U.S.C. §1692a(3) and is a "debtor" as defined by Cal Civ Code §1788.2(h).

4. At all relevant times herein, Defendant, Diversified Collection Services, Inc. ("Defendant") was a company engaged, by use of the mails and telephone, in the business of collecting a debt from Plaintiff which qualifies as a "debt," as defined by 15 U.S.C. §1692a(5), and a "consumer debt," as defined by Cal Civ Code §1788.2(f). Defendant regularly attempts to collect debts alleged to be due another, and therefore is a "debt collector" as defined by the FDCPA, 15 U.S.C. §1692a(6), and RFDCPA, Cal Civ Code §1788.2(c).

IV. FACTUAL ALLEGATIONS

5. At various and multiple times prior to the filing of the instant complaint, including within the one year preceding the filing of this complaint, Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.

6. On more than one occasion, Defendant contacted Plaintiff at a number associated with his work.

1 7. Plaintiff has informed Defendant not to contact his work phone
2 number because it is against the policies of Plaintiff's employer to receive calls at
3 work unless in cases of emergency.
4

5 8. Defendant informed Plaintiff that Plaintiff's work number was
6 "listed" even though Plaintiff has never provided said number and has constantly
7 instructed all calls to be received on his cell phone.
8

9 9. On or about August 13, 2010, Defendant contacted Plaintiff on his
10 work number and threatened that failure to pay the alleged debt would result in a
11 wage garnishment of 15% of his wages.
12

13 10. On or about August 16, 2010, Plaintiff initiated the phone call with
14 Defendant as he instructed the Defendant he would during the August 13, 2010
15 conversation.
16

17 11. During the August 16, 2010 conversation, Defendant requested
18 information regarding the make, model, and license plate of Plaintiff's vehicle,
19 implying that failure to pay the alleged debt would result in the seizure of
20 Plaintiff's property.
21

22 12. Furthermore, during the August 16, 2010 conversation, Defendant
23 threatened that if a down payment of \$1,342 was not made by 2pm on August 17,
24 2010 and a payment plan be agreed upon at \$50 a month thereafter, Defendant
25 would garnish Plaintiff's wages.
26
27
28

1 13. Defendant's conduct violated the FDCPA and the RFDCPA in
2 multiple ways, including but not limited to:
3

- 4 a) Threatening Plaintiff that nonpayment of Plaintiff's debt
5 may result in the arrest of Plaintiff or the seizure,
6 garnishment, attachment or sale of any property or the
7 garnishment or attachment of wages of Plaintiff, where
8 such action was not in fact contemplated by the debt
9 collector and permitted by the law (Cal Civ Code
10 §1788.10(e));
11 b) Repeatedly contacting Plaintiff at his/her place of
12 employment after being informed that such calls are
13 inconvenient to Plaintiff and violate the policy of
14 Plaintiff's employer (§1692c(a)(1)(3));
15 c) Engaging in conduct the natural consequence of which
16 is to harass, oppress, or abuse Plaintiff (§1692d));
17 d) Falsely representing or implying that nonpayment of
18 Plaintiff's debt would result in the seizure, garnishment,
19 attachment, or sale of Plaintiff's property or wages,
20 where such action is not lawful or Defendant did not
21 intend to take such action (§1692e(4)); and
22 e) Overshadowing the disclosures required by 15 USC §
23 1692g(a) during the thirty-day dispute period
24 (§1692g(b)).

25 14. As a result of the above violations of the FDCPA and RFDCPA
26 Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal
27 humiliation, embarrassment, mental anguish and emotional distress, and
28

1 Defendant is liable to Plaintiff for Plaintiff's actual damages, statutory damages,
2 and costs and attorney's fees.
3

4 **COUNT I: VIOLATION OF FAIR DEBT**
5 **COLLECTION PRACTICES ACT**

6 15. Plaintiff reincorporates by reference all of the preceding paragraphs.
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff respectfully prays that judgment be entered
10 against the Defendant for the following:
11

- 12 A. Declaratory judgment that Defendant's conduct
13 violated the FDCPA;
14 B. Actual damages;
15 C. Statutory damages;
16 D. Costs and reasonable attorney's fees; and,
17 E. For such other and further relief as may be just and proper.
18
19

20 **COUNT II: VIOLATION OF ROSENTHAL**
21 **FAIR DEBT COLLECTION PRACTICES ACT**

22 16. Plaintiff reincorporates by reference all of the preceding paragraphs.
23

24 17. To the extent that Defendant's actions, counted above, violated the
25 RFDCPA, those actions were done knowingly and willfully
26


27 **PRAYER FOR RELIEF**
28

1 WHEREFORE, Plaintiff respectfully prays that judgment be entered
2 against the Defendant for the following:
3

- 4 A. Declaratory judgment that Defendant's conduct
5 violated the RFDCPA;
6 B. Actual damages;
7 C. Statutory damages for willful and negligent violations;
8 D. Costs and reasonable attorney's fees,
9 E. For such other and further relief as may be just and proper.
10

11 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**
12

13 Respectfully submitted this 8th day of November, 2010.
14

15 By: 
16 **TODD M. FRIEDMAN (216752)**
17 **LAW OFFICES OF TODD M.**
18 **FRIEDMAN, P.C.**
19 **369 S. Doheny Dr. #415**
20 **Beverly Hills, CA 90211**
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24 **Attorney for Plaintiff**
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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

ORIGINAL

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DEFENDANTS

DIVERSIFIED COLLECTION SERVICES, INC.

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego, U.S. DISTRICT COURT
(IN U.S. PLAINTIFF CASES) SOUTHERN DISTRICT OF CALIFORNIA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Todd M. Friedman, P.C.
69 S. Doheny Dr., #415, Beverly Hills, CA 90211

Attorneys (If Known)

10CV 2355

DMS WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF
Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))		FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692

VI. CAUSE OF ACTION

Brief description of cause:
Violation of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/08/2010

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

20278 350.00

CR

MS 11/16/10

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS020278
Cashier ID: msweaney
Transaction Date: 11/16/2010
Payer Name: LO OF TODD FRIEDMAN

CIVIL FILING FEE
For: TORRES V DIVERSIFIED COLLECTIO
Case/Party: D-CAS-3-10-CV-002355-001
Amount: \$350.00

CHECK
Check/Money Order Num: 1509
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.